

EXHIBIT 32

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DAVID BAILEY, ET AL * 4:14-CV-01698
*
VS. * 9:05 A.M.
*
BRAD LIVINGSTON, ET AL * JUNE 1, 2016

HEARING ON PRELIMINARY INJUNCTION AND CLASS CERTIFICATION
BEFORE THE HONORABLE KEITH P. ELLISON
Volume 3 of 4 Volumes

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Proceedings recorded by mechanical stenography.
Transcript produced by computer-assisted transcription.

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1

PROCEEDINGS

2

THE COURT: Please keep your seats everybody.

3

Good morning and welcome back.

4

Okay. We have had two briefs come in overnight. I

10:10:57

5

need to talk about both of them. The first one I want to

6

talk about was plaintiffs' motion concerning Dr. Means.

7

The argument is that Dr. Means changed her report

8

drastically after her deposition and ask that I strike

9

those new opinions. Anything you want to add to what you

10:11:22

10

have already written?

11

MR. JAMES: I just want to clarify that the new

12

opinions that we're complaining about were filed on Monday

13

of this week.

14

THE COURT: Let me get defendants' response then.

10:11:36

15

MR. GREER: Your Honor, first and foremost,

16

Dr. Means' opinions in this case are not changing and that

17

is clear from the opinions that we have disclosed to the

18

plaintiffs' counsel and it's clear from her deposition

19

testimony.

10:12:01

20

THE COURT: Move the mic a little closer to you,

21

Mr. Greer. Thank you very much.

22

MR. GREER: Certainly. So that's the first and

23

foremost point to be made here. I first point out that

24

the plaintiffs themselves have supplemented their expert

10:12:14

25

designations after the depositions took place. But even

1 Q. What does that show?

2 A. That just shows that air-conditioning is protective.

3 Q. Is the finding having a working fan and taking extra
4 showers also on the Bouchama study?

02:29:34

5 A. Those were not statistically significant. Fans are
6 not protective at temperature 90 degrees with the humidity
7 of 35 percent or more. Fans should not be used for
8 preventing heat-related illness in areas of high humidity.
9 That's the MMWR and the CDC.

02:29:54

10 Q. Okay. Are there any other studies, if you can
11 identify them, that stand for the proposition that
12 air-conditioning is the key protective measure here?

02:30:13

13 A. Yes. The article -- No. 25 tab by Ostro, the effects
14 of temperature and use of air-conditioning clearly shows
15 that as the penetration in ownership of air-conditioning
16 in a community increases, mortality decreases.

17 Q. Is the Semenza study, mortality study, relevant on
18 this question?

02:30:30

19 A. Yes. It shows the same thing. Semenza, New England
20 Journal, 1995, Chicago heat wave showed clearly that
21 air-conditioning was protective against death. And that's
22 Semenza. And Semenza is also included in the Bouchama,
23 No. 4, study meta-analysis, which also showed a protective
24 effect of air-conditioning.

02:30:55

25 Q. Doctor, a TDCJ witness testified last week in these

1 hearings that the current respite policy at the Pack Unit
2 is that inmates can get on-demand access to
3 air-conditioning just by asking for it for as long as they
4 want and without having to go through medical screening.

02:31:13

5 My question for you is: Is that an adequate plan to
6 deal with the heat risk at Pack Unit?

7 **A.** No.

8 **Q.** Why not?

9 **A.** Because the time that they are not in

02:31:23

10 air-conditioning, they are subjected to the temperatures
11 at the Pack Unit which are risky and cause harm, including
12 sickness, morbidity and mortality.

13 We already have dead people in the prison system in
14 Texas and on the autopsy table in Galveston. So we
15 already know that people die.

02:31:43

16 Now, the key piece is if you say three or four or five
17 hours, that leaves 20 or -- 19 or 20 hours in these heat
18 conditions.

19 The other key piece is not only the risk for those
20 other hours is that people don't know they are in trouble.
21 I have alluded to that throughout the studies that people
22 show headache, dizziness, fatigue.

02:32:01

23 And the rapidity outside of the exacerbation of
24 illnesses such as cardiovascular, all the things we have
25 gone through, the rapidity, the speed at which heatstroke

02:32:22

1 strikes means that checking people that are walking
2 around, somebody is sleeping in their bed, everything
3 looks fine in the night, and they can still suffer a
4 heatstroke without the correction staff realizing they're
5 in trouble.

02:32:43

6 **Q.** Is it possible for someone to start having cognitive
7 problems from heat illness before they realize they need
8 to go to air-conditioning?

9 **A.** Of course. That's one of the reasons that it has to
10 be simply mandatory that they are there. It's not up to
11 an individual who is not a doctor or individuals who may
12 not recognize that dizziness and weakness and fatigue are
13 manifestations of heat-related illness that could be
14 precursors, but frequently they do not occur before
15 heatstroke occurs.

02:33:16

16 **Q.** Let me finish up here, Doctor. Plaintiff Santee --
17 you looked at all the plaintiffs' medical records, right?

18 **A.** That's right.

19 **Q.** He is younger than 65?

20 **A.** Yes. I think he is in his 40s.

02:33:30

21 **Q.** He doesn't have any medical conditions that make him
22 heat sensitive?

23 **A.** That's correct.

24 **Q.** He doesn't take any medications that make him heat
25 sensitive?

02:33:38

1 is that it is not necessary for me to look at the 1,400
2 medical records."

3 **A.** That's what I just said.

4 **Q.** No. No. Let me finish, please. "These

05:19:29

5 temperatures" -- it's hard to see. There we go.

6 "These temperatures are well understood, well
7 accepted, too hot and every individual is at risk. I
8 don't need to find -- I'm saying there's a risk. I don't
9 need to look at 1,400 or 130,000 prisoners in the Texas
10 Department of Corrections to find harm. So what I'm
11 talking about is the risk of these temperatures. Whether
12 someone has suffered injury, disease or worsening of
13 underlying illnesses on a one-by-one basis is not the
14 basis of my opinion."

05:20:08

15 Did I read that correctly?

16 **A.** You read it correctly, yes.

17 MS. TULINSKI: That's all the questions I have,
18 Your Honor.

19 THE COURT: Any redirect?

05:20:16

20 MR. SINGLEY: No, Your Honor. Thank you.

21 THE COURT: Can we adjourn for the day or you
22 want to put on another witness?

23 MS. BURTON: We can adjourn for the day and start
24 tomorrow.

05:20:24

25 THE COURT: That's fine. I'm not going to leave

1 right away. You are excused. Thank you very much. We'll
2 start at 9:00.

3 MR. SINGLEY: Thank you, Your Honor.

4 THE COURT: Thank you, Doctor.

05:20:33

5 THE WITNESS: Thank you, Your Honor. I
6 appreciate the opportunity.

7 THE COURT: Thank you.

8 (Proceedings concluded at 5:21 p.m.)

9 (Proceedings adjourned at 5:20 p.m. and continued in
10 Volume 4.)

11 Date: June 10, 2016

12 ***COURT REPORTER'S CERTIFICATE***

13 I, Laura Wells, certify that the foregoing is a
14 correct transcript from the record of proceedings in the
15 above-entitled matter.

16

17 /s/ Laura Wells

18 Laura Wells, CRR, RMR

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